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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,076	01/25/2001	Michael D. Krysiak	P/35-4	7143

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/769,076

Applicant(s)

KRYSIK ET AL.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-30,32,38,47,50 and 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-30,32,38,47,50 and 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 50 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for claims 26-30, 32, 38, 47, and 52 given the broadest and reasonable interpretation of the specification these claims pertain merely to a mulch that is colored as an indicator and does not involve any chemical reactions (specification page 10 line14-15), the specification does not reasonably provide enablement for claim 50. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with claim 50. The specification does not disclose what makes the color change or fade, is it a chemical process? How does the chemical process work and what are the chemicals and reactions involved?

Claim Objections

Claim 52 is objected to because of the following informalities:

Claim 52 to better clarify the function of this claim the preamble should read --A method for indicating the chemical content of the soil comprising:--

Since it is disclosed that the mulch acts as an indicator, but is not disclosed how the mulch adjusts the chemical content on the soil.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 50 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,932,156 to Underwood.

Regarding Claim 50, Underwood teaches a colored mulch product (Underwood abstract line 1) wherein the color fades or disappears (Underwood abstract line 2) in response to a lack of nutrient or fertilizer in the mulch (Underwood abstract line 4 “ambient weather conditions”; the examiner views “nutrient” as water and when it rain, rain is an element of ambient weather conditions, objects inherently tend to appear vibrant. As the object dries (i.e. as it losses the nutrient water) it will inherently fade).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 47 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,324,781 to Stevens.

Regarding Claim 47, Stevens teaches a colored mulch product (Stevens abstract line 2) comprising: a material comprising a fiber cellulose, clay, loam, sand, and/or a

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combination of same; a binding agent (Stevens Col. 2 line 2); and a dye and/or pigment (Stevens Col. 6 line 35) produced by an agglomeration operation (Stevens Col. 2 line 50-51 teaches spraying and drying as taught by applicant on page 15 line 5 of applicant's specification. Applicant has not claimed any limitation in this claim that pertains to the mulch acting as an indicator).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-30, 38 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 5,387,745 to Brendle.

Regarding Claims 26, 28, 29, and 30, Stevens teaches a colored mulch product (Stevens abstract line 2) consisting essentially of: a material comprising a fiber cellulose, clay, loam, sand, and/or a combination of same; a binding agent (Stevens Col. 2 line 2); and a dye and/or pigment (Stevens Col. 6 line 35). Stevens teaches a dye, but is silent on the dye **indicates** to a user environmental conditions of the soil where said mulch is placed; the dye **indicates** to a user the acidity of said soil; the dye **indicates** to a user the moisture content of said soil; or the dye **indicates** to a user the chemical content of said soil.

However, Brendle teaches that is old and notoriously well-known to use color (i.e. dye and/or pigment) in agricultural applications as an indicator, a label, a marker.

Brendle is cited **merely to teach** that is known **to use color as an indicator of a particular characteristic of a parcel of land**. Purely as an example, in the case of

Brendle, it is an area of land that receives a coating of a chemical composition that was pre-treated with a colorant (Brendle abstract and Col. 2 line 21-40). In other words,

Brendle can apply to teaching an area of land that receives a coating of mulch composition that was pre-treated with a dye/pigment. It would have been obvious to

one of ordinary skill in the art to modify the teachings of Stevens with the teachings of

Brendle at the time of the invention for the advantage of ease of distinction and the

known advantage that the presence of color has been found that misapplications of substances is more easily avoidable as taught by Brendle (Brendle Col.2 line 58-60)

(i.e. distinction of knowing where a pesticide has been applied, knowing where a

particular species/variety of plant has been planted, etc). It is generally knowledge to of

one of ordinary skill in the art that different plant varieties require different soil

conditions. Thus, it would have been obvious to one of ordinary skill in the art to use a

green colored mulch to distinguish where grass seed was plant and a red colored mulch

to distinguish were tomatoes were planted. These two colors would inherently indicate

different soil conditions since grass and tomato plants require different levels of

moisture, different levels of acidity, and different levels of fertilization. Using color as an

indicator/marker of any property, process, or treatment it an obvious modification for

one of ordinary skill in the art as supported by Brendle.

Regarding Claim 27, Stevens as modified teaches the mulch comprising; nitrogen, phosphorous, and potassium fortifiers (Stevens abstract last line).

Regarding Claim 38, Stevens as modified teaches the mulch is the same or similar color of an actual plant, flower, fruit, or vegetable of a seed planted with the mulch (Stevens Col. 6 line 37).

Regarding Claim 52, Stevens as modified teaches a method of placing colored mulch on top of soil; inherently changing the colors of the mulch based on the condition of the soil since when it rain, rain is an element of ambient weather conditions, there is more water in the soil objects tend to appear vibrant, but as the object dries (i.e. as it losses the nutrient water) it will inherently fade. Thus the colors inherently change based on the moisture conditions of the soil.

Stevens is silent on adding chemicals to the soil based on the color of the mulch. However, on one hand, it is old and notoriously well-known in the art of plant husbandry to observe and test soil conditions to see if they meet the desired parameters. It would have been obvious to one of ordinary skill in the art, at the time of the invention, if they observed that the mulch was faded in appearance because of reduced moisture levels, that one of ordinary skill in the are would obviously know to add the chemical (i.e. water) to improve the moisture conditions depending on the needs of plant varieties located in that area. On the other hand, it is old and notoriously well-known to use color as an indicator as discussed in the preceding paragraphs. If grass was plant with the green colored mulch it would be obvious to one of ordinary skill in the art to add chemicals to that area to meet the needs of grass.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 5,387,745 to Brendle as applied to claim 26 above, and further in view of U.S. Patent No. 5,734,167 to Skelty.

Regarding Claim 32, Stevens as modified teaches coloring the mulch, but is silent on the dye is florescent. However, Skelty teaches it is old and notoriously well-known to dye agricultural products with florescent dye allowing the mulch to glow in the dark (Skelty Col. 1 line 35-45). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Stevens with the teachings of Skelty at the time of the invention since the modification is merely the selection of a known alternate coloring for the advantage of enabling safe night time agricultural operations as taught by Skelty (Skelty Col. 1 line 1-26).

Response to Arguments

Applicant's arguments with respect to claims 26-30,32,38,47,50 and 52 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:


U.S. Patent No. 6,058,647 to Emalfarb is cited as an example of the knowledge available to one of ordinary skill in the art that objects darken (i.e. change color) as moisture is absorbed (Emalfarb Col. 3 line 29-30 and 58).

U.S. Patent No. 6,202,344 to Clarke teaches changing the color of the mulch (Clarke Col. 1 line 49-51).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

17 March 2005